The cases cited in *Footnote One* of respondent's "Memorandum" (a) are clearly distinguishable; (b) only three of them tend to support the proposition in support of which they are cited; and (c) four of them support petitioner's argument that a finding property was held primarily for sale to customers in the ordinary course of business is an ultimate finding of fact subject to review free of the restraining influence of the clearly erroneous rule. We illustrate briefly:

1. *Tidwell* v. *CIR*, 298 F.2d 864 (CA-4-1962)
   (No contention improper legal criteria applied)
   (Subdivided tracts—arranged with real estate agents to advertise and sell. Unless clearly erroneous, findings stand.) (P. 866)

2. *Heebner* v. *CIR*, 280 F.2d 228 (CA-3-1960)
   (Taxpayer had no intention to retain property as investment holding.) (P. 234)
   (Finding property held primarily for sale is in nature of an ultimate finding, a legal inference from other facts, subject to review free of the restraining influence of the clearly erroneous rule). (P. 232)

3. *Bauschard* v. *CIR*, 279 F.2d 115 (CA-6-1960)
   (Property subdivided and improved. Does not mention "clearly erroneous".)

4. *Kaltreider* v. *CIR*, 255 F.2d 833 (CA-3-1958)
   (Subdivided land—built houses on some)
   (Finding primarily for sale to customers. Ultimate finding of fact, a legal inference from other facts; and it is subject to review free of the restraining impact of the "clearly erroneous" rule.) (P. 837)

5. *Zack* v. *CIR*, 245 F.2d 235 (CA-6-1957)
   (Per curiam affirmance of 25 TC 676 on ground findings not clearly erroneous.)

6. *S. E. C. Corp.* v. *U. S.*, 241 F.2d 416 (CA-2-1957)
(Sale of used water, beer and frosted food coolers rented and ultimately sold to customers. Per curiam affirmance of 140 F. Supp. 717.)

7. *Philber Equipment Corp.* v. *CIR*, 237 F.2d 129 (CA-3-1956)
(Taxpayer leased motor vehicles principally to fleet operators. Sold when useful life ended. Tax Court held "Primarily for sale". Court of Appeals reversed. Ultimate finding of fact—legal inference subject to review free of restraining influence of "clearly erroneous" rule. (P. 131)

8. *Harry Slatkin Builders* v. *CIR*, 235 F.2d 189 (CA-6-1956)
(Per curiam—Dwelling units sold by petitioner—held primarily for sale—not investment—findings not clearly erroneous. Tax Court affirmed.)

9. *Smith* v. *Dunn*, 224 F.2d 353 (CA-5-1955)
(Architect liquidated land held by inheritance. Subdivided—employed real estate agent to handle. Court of Appeals reversed District Court holding that gain was ordinary income. No dispute in evidence. Reversed for entry of judgment for taxpayer.)
(Supports view that question of law only is presented when no dispute in evidence.)

10. *Shearer* v. *Smyth*, 221 F.2d 478 (CA-9-1955)
(Per curiam affirming 116 F. Supp. 230 on grounds stated in District Court opinion. Petitioners were real estate agents. Subdivided tract—Sales campaigns.)

11. *Victory Housing No. 2* v. *CIR*, 205 F.2d 371 (CA-10-1953)—Supports this petitioner's argument.
(Judgment of tax court against taxpayer reversed. Considerable number of sales in short time held not sufficient. As in the instant case, taxpayer continued in rental business; did not buy or develop real estate for sale; held no real estate license; did not advertise; and did not list property with real estate men.) (P. 373)